

REMARKS

A. Status of the Application

- Claims 2, 3, 5 to 8, 38, 39, 41 to 44, 74, 75, 80, 82 to 87, 92, 94 to 140 are pending in the application, of which claims 2, 38, 116 and 133 are independent claims.
- Claims 2, 3, 5 to 8, 39, 41 to 44, 74, 80, 82, 83, 86, 87, 92, 94 to 97, 99, 107 to 115 and 117 to 133 are amended. Claims 6 and 86 are amended to correct minor typographical errors. No new matter has been added.

Accordingly, entry of the amendments is respectfully requested. Applicants have amended the claims to recite particular embodiments that Applicants, in their business judgment, have determined to be commercially desirable at this time. The claim amendments have not been submitted for any reasons relating to patentability.

Applicants intend to pursue the subject matter of the previously cancelled claims, in one or more continuing applications.

B. Claims 2 and 38 Under 35 U.S.C. §103(a)

On page 3, the Office Action rejected claims 2, 3, 5 to 8, 38, 39, 41 to 44, 74 to 97 under U.S. Patent No. 6,993,511 (Himmelstein). The Office Action fails to state a *prima facie* case of obviousness for any claim.

1. Certain Limitations Are Not Disclosed in Himmelstein

Independent claims 2, 38, 116 and 133 describe, *inter alia*, “receiving a first parameter associated with a transaction of a durable good at a future date, in which the durable good comprises a vehicle and the first parameter comprises at least one of: a year of the vehicle, a manufacturer of the vehicle and a model of the vehicle” and “delivering the durable good, in accordance to the agreement, to the specified location on the future date” (emphasis added).

The cited portions of Himmelstein fail to describe receiving parameters directed at the “year”, “manufacturer” or “model” of a vehicle. In fact, Himmelstein does not even reference a vehicle, much less the parameters associated with a futures transaction of such vehicle.

Neither do the cited portions of Himmelstein describe an actual delivery of a durable good “to [a] specified location on the future date,” as in Applicants’ independent claims. Rather, Himmelstein states that “at settlement, title to the security or financial interest which is the subject of the Himmelstein Option is transferred” (emphasis added) (col. 6, lines 31-33). Transference of a title of a security does not equate actual delivery of a durable good to a specified location. When a claim recites a limitation that is absent from the art, the claim is not obvious. MPEP §2143.03; *Motorola v. Interdigital Technology Corp.*, 121 F.3d 1461, 1466-67, 43 USPQ2d 1490, 1490-91 (Fed. Cir. 1997) (reversing a jury verdict of obviousness because an element was not taught in the particular art relied upon, even though that element was known elsewhere). Therefore, the Office Action has failed to state a *prima facie* case of obviousness for claims 2, 38, 116 and 133.

Furthermore, the Office Action mischaracterizes Himmelstein as disclosing transactions on a futures market. A futures market is defined as a “market in which participants buy and sell commodity/future contracts for delivery on a specified future date.” See e.g., Investopedia.com, available at <http://www.investopedia.com/terms/f/>

futuresmarket.asp. Thus, the bartering system in Himmelstein is missing a crucial element of a futures market, i.e., the delivery of the contracted item.

2. There is No Substantial Evidence of Motivation to Modify and No Reasonable Expectation of Success

The alleged motivation proffered by the Office Action for modifying Himmelstein to include vehicles has absolutely no basis in the reference. Instead, the Office Action merely provides a general, sweeping and inappropriate assertion of an alleged motivation to modify the Himmelstein reference, without any specific support. In order for the Office Action to make a valid *prima facie* case of obviousness, it must provide some evidence beyond mere Official Notice. As such, Applicant demands that the Office Action provide concrete evidence for the proffered motivation to expand the teachings of the art if the rejections are to be maintained.

Furthermore, the Office Action is silent with respect to reasonable expectation of success—an element required for the showing of any obviousness rejection. MPEP §2143.02. Due to the omission of each of the three essential elements for an obviousness rejection (i.e., claim language, motivation to combine, and reasonable expectation of success), three separate reasons exist for no rejection. Even if a rejection is maintained or raised, final rejection is premature.

For at least the foregoing reasons, any rejection under §103(a) that may exist (Applicant notes that the Office Action is insufficiently complete to reject any claim) should be withdrawn.

C. General Comments on Dependent Claims

Each dependent claim is patentable for at least the same reasons as the independent claim on which it depends. Thus, Applicant believes that it is unnecessary at this time to argue the allowability of each dependent claim individually. However, Applicant does not necessarily concur with the interpretation of the dependent claims as set forth in the Office

Action, nor does Applicant concur that the basis for the rejection of any of the dependent claims is proper. Therefore, Applicant reserves the right to specifically address the patentability of the dependent claims in the future, if deemed necessary.

D. Conclusion

In general, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as a concession of any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In view of the foregoing amendments and remarks, Applicant respectfully submits that the application is in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

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Respectfully submitted,

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